

**PERLINDUNGAN HUKUM TERHADAP ANAK
SEBAGAI PELAKU TINDAK PIDANA PERSETUBUHAN ANAK
(Studi kasus di UPPA Polres Batu)**

Jurnal Ilmiah

Diajukan Untuk Memenuhi Sebagian Syarat-Syarat Memperoleh
Gelar Kesarjanaan Dalam Ilmu Hukum

Oleh :

AMALIA FRANSISKA ILYAS

NIM. 0910113207



**KEMENTERIAN PENDIDIKAN DAN KEBUDAYAAN
UNIVERSITAS BRAWIJAYA
FAKULTAS HUKUM
MALANG
2013**

ABSTRAKSI

AMALIA FRANSISKA ILYAS, 0910113207, 2013, Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana Persetubuhan Anak (Studi Kasus di UPPA Polres Batu), Skripsi, Hukum Pidana, Fakultas Hukum Universitas Brawijaya Malang, Dosen Pembimbing: Nurini Aprilianda, SH. MHum. Dan Milda Istiqomah, SH.MTCP.,

Dalam penulisan artikel ilmiah ini penulis membahas tentang Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana Persetubuhan Anak (Studi Kasus di UPPA Polres Batu). Hal ini dilatarbelakangi dengan semakin meningkatnya kasus persetubuhan anak akibat perubahan-perubahan sosial yang serba cepat akibat dari proses modernisasi dan globalisasi. Minat anak terhadap jenis kelamin lain mulai berkembang dalam arti khusus, sedang pengenalan terhadap diri sendiri ternyata masih sangat kurang.

Artikel ilmiah ini mengangkat rumusan masalah : (1) Bentuk perlindungan hukum terhadap anak sebagai pelaku, (2) Kendala dan upaya yang dihadapi dan dilakukan UPPA Polres Batu. Kemudian dalam artikel ilmiah ini menggunakan penelitian empiris dengan pendekatan yuridis sosiologis. Bahan hukum primer dan sekunder.

Berdasarkan hasil penelitian, penulis memperoleh jawaban atas permasalahan yang ada, Bahwa dalam memberikan perlindungan terhadap anak sebagai pelaku, UPPA melakukan penyidikan yang berbeda dengan penyidikan terhadap orang dewasa. Secara keseluruhan perlindungan hukum terhadap anak sebagai pelaku diwilayah UPPA Polres Batu sudah cukup baik, tapi dalam tahap penyidikan masih ada beberapa hal yang tidak sesuai dengan Undang-Undang.

Kata Kunci : Persetubuhan, Anak Sebagai Pelaku, Perlindungan Hukum.

ABSTRACT

AMALIA FRANSISKA ILYAS, 0910113207, 2013, Legal Protection of Children Against Crime Perpetrators Intercourse For Children (Case Studies in Batu Police UPPA), Thesis, Criminal Law, Faculty of Law, University Brawijaya, Supervisor: Nurini Aprilianda, SH. MHum. And Milda Istiqomah, SH.MTCP.,

In writing a scientific article, the writer discusses the Legal Protection of Children Against Crime Perpetrators Intercourse For Children (Case Studies in UPPA Polres Batu). It is motivated by the increasing cases of child sexual intercourse due to social changes resulting from the fast-paced modernization and globalization processes. Interest of the child against the other gender began to grow in a special sense, is the introduction of self was still lacking. The article raised the scientific formulation of the problem: (1) form the legal protection of children as actors, (2) Obstacles faced and efforts made UPPA Polres Batu. Later in this article use scientific empirical research with sociological juridical approach. Primary and secondary legal materials.

Based on the results of the study, the authors obtained answers to the problems that exist, that the protection of children as actors, UPPA different investigation with the investigation against adults. Overall the legal protection of children as perpetrators region UPPA Polres Batu is good enough, but in the stage of investigation there are still some things that are not in accordance with the Act.

Keywords: Intercourse, Kids As Actors, Legal Protection.

A. Introduction

Children are the future and the next generation who have limitations in understanding and protecting themselves from the various effects of the existing system¹. But along with the times, a lot of children who can no longer be expected as the successor to the well there is often a crime of the sexual intercourse minors committed by an adult or by minors, and This is a huge threat dangerous for children who are the future generation. Rapid technological advances that happened during the time it is in the wrong use by minors, especially the internet access that has been developed in which it is precisely in the wrong use by some minors to open porn sites in which it affects the behavior of a child.

Stimulation of the various changes and progress of modernization as well as the permissive culture may not be avoided by teens today especially children, resulting in them nascent sexual feelings are starting to sense or receive sexual stimulation of the opposite sex. They began to fantasize about sex, there was stimulation for masturbating and masturbation, and the desire to have sex with the opposite sex, causing symptoms that lead to sexual promiscuity, abortion, pregnancy outside of marriage as well as cases of sexual crimes committed by teenagers / children , even a child or teenager of today is also the marital relationship or referred freesex with his girlfriend and their own volition due to the many changes of the progress of modernization itself.

The tendency of the child as a criminal intercourse as above is certainly very worrying. This condition indicates a lack of sex education for children, so they can not tell which is allowed and what should not be done related to their reproductive organs. The emergence of children as perpetrators of sexual violence because of the influence of media, such as watching a pornographic VCDs never, ever seen people who have sex, whether it is done by the parents, or friends are more mature, do so because of the bandwagon or forced by older children from her.

¹ Marlina,2009, *Peradilan Pidana Anak di Indonesia Pengembangan Konsep Diversi dan Restorative Justice*, PT Refika Aditama, Bandung, Kata Pengantar Halaman [XV].

Most children who become perpetrators or victims of crime come from families copulation underestimate the education and childcare. Some of them come from families that are less harmonious, occurring domestic violence (domestic violence), children who have lost the function of parenting, so that children do not have a father figure as well as an idealized parent. In the context of children's rights real child offenders are also victims of sexual intercourse. Parents are responsible for what happened to the child. Similarly, the environment and a more mature person responsible for creating a situation conducive for the growth of children. However, the environment also neglect to child development, people tend indifferent to what happens to young children presenting even games and spectacle that can damage a child's development. Adults do not give examples of good behavior in children, they do not even realize that his behavior was followed by child. Responsibility of parental education seems to have been completed by submitting the child's education at school. Similarly, the father, were not fully involved in the education of children, as the responsibilities of the mother, so that if anything happens to the child, the mother is often blamed.

Very few cases of copulation on a minor who was caught when the actors are doing these crimes. Most of these cases are known to have come from the victim's family report, because it is known there has been injury to the victim's body parts or even the child victims were taken by the offender for several days, so the families of the victims reported that his son or his brother had not been home more than 24 hours, but after being investigated by the police that the child was in a villa with someone who in this case is himself and his girlfriend as well as a principal in the case. In the case of intercourse is usually the perpetrator seduce or promise something that the victim would perform marital relationship.² The criminal act of intercourse minors is not something that can be considered as small and insignificant matter. This issue is very important because the perpetrators are minors, even the impact of this crime will influence the future of children who are perpetrators and victims, many of whose education stopped because of child actors had to undergo punishment for what he had done, even also for the victim if the child had been pregnant before, and even a child who is depressed knowing that the perpetrator in this case

² Hasil wawancara dengan kepala Unit PPA Polres Batu. Ibu AIPTU Endang Iriani, 25-Oktober-2012.

was her boyfriend alone and severity of his girlfriend does not want to be responsible for what did against the victim because the perpetrator in this case is still in underage.³

In Indonesia existing laws governing issues concerning children one of them is Law No. 23 Year 2002 on Child Protection, which in the legal protection of the law that is the basic reference in the protection of children as perpetrators of crimes against children under the marriage act age.

B. Problem

1. How Forms of Legal Protection of Children as Actors Case Against Crime Kids Intercourse?
2. What are the obstacles faced UPPA Polres Batu in providing legal protection and tackling child cases Intercourse Crime committed by children?

C. Research Method

The research is empirical legal research (empirical legal research) because in this study aims to determine the facts that occurred in UPPA handling criminal cases intercourse with young children as actors. This study uses juridical sociological, juridical study aims to conduct a study related to the form of legal protection of children as criminal child sexual intercourse UPPA. While the sociological approach made by reviewing the factual conditions that exist in society. Sociological research is called for researchers to focus on the object, which some survey respondents. So this study aims to find the facts (fact finding), then to the identification of problems (problem identification), as well as problem solving (problem solution).⁴

The research was to choose and determine the location at Batu the police station, especially in women and children's unit. Women and Children Protection Unit. Polres Batu is a special unit to protect women and children in Indonesia. As women and child protection unit that has stood for a long time, of course, these units have been completed criminal cases the victims or the perpetrators were women and children, one of them concerning the case of protection against criminal intercourse minors. While the types of data used in this study consisted of two types of primary data and secondary data. The source of the data in the primary data research is empirical data in the study site in the form of interviews with respondents or key informant in

³ Hasil wawancara dengan kepala Unit PPA Polres Batu. Ibu AIPTU Endang Iriani, 25-Oktober-2012.

⁴ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta, UI Press, hal 86.

this case was Kanit UPPA Mrs. Endang Aiptu Iriani, UPPA members including Brigadier Radityo Tri N, N Setio Eko Brigadier, Brigadier siti Nurlaila.⁵ Secondary data that is based on a search of official documents in the UPPA Polres Batu

To obtain data with respect to this research, the authors use interviews and literature. The primary data collection method in this study were interviews in the field, the researchers went directly to the object of research is expected to produce objective data. Interviewing is one of the techniques of data collection by making unilateral questioning systematically, based on the purpose, this study uses the type independent interviews, the interviews using an interview guide or guide made by:

- 1 people Kanit UPPA
- 3 groups UPPA
- So that all of the respondents amounted to 4 people

Literature for secondary data that reading books and studying literature in accordance with the existing discussion. The data has been collected through data collection yet gives meaning and purpose of research. Research has not been able to draw conclusions for research purposes because the data is still the raw material, so the effort required to process it. The process is done is to check, examine the data obtained to guarantee that the data can be accounted for in accordance with reality. The data analysis technique used in this study in the form of descriptive analysis method, which aims to accurately depict and describe the data through forms of the written word and is used to interpret the data and interpret the results orally or in writing of the specific person and observed behavior.⁶ While the writing is done by using the inductive method is a way of thinking which starts from specific facts in the form of facts leading to a conclusion of a general nature.

D. Content

Implementation Forms For Legal Protection Against Child Crime Perpetrators of Child Intercourse in UPPA Polres Batu

Form of Protection of children in UPPA is giving protection to children in conflict with the law. The protection of children in conflict with the law can be achieved by

⁵ Tatang M. Amirin, *Menyusun Rencana Penelitian*, Jakarta, PT Raja Grafindo Persada, 1995

⁶ Saifudin Azwar, *Metode Penelitian*, Yogyakarta, Pustaka Pelajar, 2003, hal 126.

protecting the rights of every child in conflict with the law in accordance with human rights. Protection of the rights of children in conflict with the law is needed in order to realize their welfare. This is consistent with the listed in the Convention on the Rights of the Child, in particular Article 37 letter a stating that no child shall be allowed to undergo a torture or to cruel, degrading treatment or punishment, inhuman or degrading treatment. One of the legal process that will be undertaken by children who commit crime is a process of investigation, arrest, and even checks up to the arrests made by the police. At these stages there are rules established to protect the rights of children who commit criminal acts, which rules must be respected and upheld by the police as an investigator. The investigation in this case means a series of measures taken in accordance with the way the investigation authorities are set out in the law to search for and collect evidence, and the evidence is made or a light offense happened and simultaneously find criminal.⁷

In the case of child investigation or proceeding based child with Law. 3 of 1997 on Juvenile Justice in which specifically regulate the process of examination of the case of children the Code of Criminal Procedure Code in force in General, therefore, apply the rule of law "*lex specialis derogat lex generalis*" meaning more specific rules override the rules more common. Therefore it is better to apply Law No. 3 Year 1997 on Juvenile Justice of the Criminal Procedure Code of Criminal Procedure nevertheless be valid throughout not regulated under the Juvenile Justice Act. The process of investigation of the case of children under Law No. 3 of 1997, there are several differences when compared with the case investigation process set out in the Code of Criminal Procedure specifically for both adults concerned about the investigation authorities, the investigation, arrests, detention, secrecy of the investigation process, investigation on children under 8 years. While some things, such as how to keep the same filing the lawsuit filing against adults so applicable provisions of the Code of Criminal Procedure. Special arrangement is a form of legal protection against criminal As with children, so that way, the process, and the investigation period is lower than in adults. In a lawsuit in which involves minors as a suspect in the investigation the investigator must consider the rights of children by the Child Protection Act. For that before reviewing the results of research and discussion, must first outline the rights of children

⁷ Pasal 1 ayat 2 Kitab Undang-Undang Hukum Acara Pidana

when dealing with the law, according to Law No. 23 of 2002 on Child Protection. Form of Protection of children as perpetrators or victims of crime at the UPPA Polres Batu:

1. The identity of the victim will be hidden;
2. When the investigation is ongoing investigator will ask the victim or perpetrator is ready for examination, if the perpetrator or victim is not ready to provide the information the investigators will wait until the perpetrator or the victim is ready. This is done so that the perpetrator or the victim does not feel in the press or in force.
3. Victims suffering from depression due to stress, injury to the limbs in the case of intercourse is common infection of the victim's genitals, so will get rehabilitation from UPPA.
4. If the investigation while the victim was not feeling well then will be taken to the hospital for health care.
5. Actors informed in advance about what is alleged to him.
6. Investigators use a language that is easily understood by the child and conduct examination performed by him while playing with a family atmosphere.
7. Investigation performed at room special and different from the examination room where the suspect most adults.
8. At the time of the investigation the investigator using a free uniform, not wearing uniforms that the suspect police generally more comfortable and not feel pressured.
9. Investigators invited her family to be with him at the time of the investigation because the suspect refused to be accompanied by legal counsel in the investigation.
10. Investigators had kept the investigation into this case so as not to be known by the mass media.
11. Investigators also presented members Correctional Center (BAPAS) to conduct an examination of the suspect because the suspect is a minor.⁸

⁸ Hasil wawancara dengan kepala Unit PPA Polres Batu. AIPTU Endang Iriani S., 24-Desember-2012.

Fulfillment of children's rights in the process of investigation should be conducted under the provisions of applicable law. In the process of investigation, shall be made in accordance with the law of criminal procedure used in Indonesia and based on the provisions of the Child Protection Act No. 23 of 2002. It thus can not be separated because of the suspect and the victim is a minor, this can be seen in investigation report made by the investigator and signed by an authorized officer in the Police Department who said the actor had actually met his rights as a suspect child under-age.⁹

In addition based on the investigation report must also be interviewed by investigators who examined the case. From interviews with the investigator said he had done the procedure under the Child Protection Act No. 23 of 2002 to conduct the investigation as suspects, including minors.¹⁰

Obstacles Faced Police in UPPA Police Investigator In Stone As Providing Legal Protection and Efforts to Tackle Crime Cases Intercourse Kids by Kids

Constraints faced by investigators in the field related to the investigation of children as criminals.

a. Yuridical constraint

Basically, the problem is closely linked to the juridical existence of a rule of law that applies, of course, this is related to the implementation of the legislation in the criminal investigation of the child. When we refer to the Juvenile Justice Act, stated that an investigator or police investigators and the Civil Servant (investigators). In the event an investigator / investigator assistance in an investigation is still not too apply investigative procedures as appropriate to the child as a perpetrator or a victim defined in Law No. 3 Year 1997 on Juvenile Justice.

b. Non juridical constraint

The children were also found in the investigation of the constraints that are non-judicial, it is influenced by the presence of several factors that influence the actions and behavior of investigator / investigator assistance in the criminal investigation police child UPPA. As a result of the actions and behavior of interrogators deviant child servants in

⁹ Darwan, 2003. *Hukum Anak Indonesia*. PT. Citra Aditya Bakti, Bandung. Hal.39

¹⁰ Hasil wawancara dengan kepala Unit PPA Polres Batu. Ibu AIPTU Endang Iriani, 25-Oktober-2012.

carrying out investigations of children as criminals, thereby affecting the enforcement of the law itself. From the results of research conducted at the Polres Batu can be explained by the existence of several factors that influence the investigation by interrogators servant boy child in the process of investigation, law enforcement are factors, infrastructure factors, social environmental factors, control factors.

To overcome the above constraints, Women and Children's Services Unit (UPPA) Polres Batu made several attempts to provide legal protection for victims of sexual intercourse, is: ¹¹

1. Non Yuridical effort

Non judicial efforts in tackling crime one child intercourse with preventive or preventive measures are taken to prevent the occurrence of criminal intercourse, among others:

- a. Providing counseling or an appeal to the public to respect, protect the rights and dignity of women in particular;
- b. Increase awareness in the community to prevent crime family intercourse starting to pay more attention to family members of each family member in particular women both children and adult;
- c. Increase public awareness of the practical steps in securing themselves in relationships in the community to anticipate the occurrence of criminal offenses particularly intercourse. For women should not go out the night alone, wearing decent clothes, and be wary of men that are not affected solicitation;
- d. Providing an appeal to the public to immediately report to the authorities in case of criminal intercourse either happened to her or anyone else.

2. Yuridical effort

- a. For victims who are depressed, UPPA perform a variety of approaches, in fact rarely UPPA is asking for help or collaboration with relevant agencies such as the Department of Social Welfare (Dinsos), Non Governmental Organizations

¹¹ Hasil wawancara dengan kepala Unit PPA Polres Batu. Ibu AIPTU Endang Iriani, 24-Desember-2012.

(NGOs), Woman's Crisis Center (WCC), and others to make efforts to approach the victim to get out of his depression.

- b. For victims who are afraid to report, conducted various outreach to the public on the effects arising for victims of illegal sexual intercourse in the future if the events that happened to him was not immediately reported to police.
- c. For the victims, given understanding to be willing and cooperative in order to view that sexual intercourse is not only a disgrace, but merely a crime against human dignity and a violation of human rights.
- d. For lack of a role in the communities surrounding the victim, the police in particular PPA unit further improve coordination with social services and social institutions in the community. In addition, educating the public about the obligation to report to the authorities when people hear, see, or know of the existence / occurrence of criminal intercourse.
- e. Efforts to overcome obstacles in the investigation is to sense the victim to be able to meet all of the examination. Witnesses should also be also be helpful in giving the true explanation for the smooth process of investigation and to disclose a felony.

E. Conclusion

1. That the role of UPPA Polres Batu in providing legal protection for perpetrators of sexual intercourse, among other:

- a. Receiving reports
- b. Checks in a special room and different from the examination room where the suspect most adults.
- c. Efforts of investigation, arrest, detention
- d. Investigators using a language that is easily understood by children
- e. Investigators use a free uniform when conducting an investigation
- f. Investigators invited families to accompany actors actors during the process of investigation
- g. Conceal the identity of the perpetrator, the goal is that the perpetrators of intercourse were not stressed or censure by the community

- h. Providing counseling outside the law, with the offender counseling is expected to tell the truth, and very clear about the truth without fear and distress. That way the police are also easy to investigate.
 - i. Investigators present members Correctional Center (BAPAS) to conduct an examination of the child as the perpetrator.
2. That in an effort to an effort to provide legal protection against criminal intercourse party rock Cities Unit PPA having some problems;
 - a. Yuridical constraint,
 - b. Non Yuridical constraint.
3. That to overcome the constraints of a criminal intercourse children, Women and Children Services Unit (UPPA) Rock Police made several attempts to give legal protection to the perpetrators of sexual intercourse, is prevention (preventive measures), enforcement (repressive efforts).

Suggestion

1. Units PPA if only to better provide legal protection to children as perpetrators or victims at the time of the investigation, as well as the prosecution wishes so that was a minor should be more concerned with the rights of children as young offenders intercourse.
2. Supposed to overcome the obstacles faced UPPA in handling criminal cases intercourse with young children as perpetrators, investigators at UPPA members should further implement the legislation in the implementation of the investigation.
3. UPPA put more effort in improving coordination with social services and social institutions in the community. In addition, educating the public about the obligation to report to the authorities when people hear, see, or know of the existence / occurrence of criminal intercourse. And also provide counseling to some junior and middle end, explain to them that intercourse would be a major impact in destroying the ideals and their future, and also very detrimental to their health

F. References

Darwan, 2003. *Hukum Anak Indonesia*. PT. Citra Aditya Bakti, Bandung. Hal.39

Dr. Maidin Gultom, SH., M.Hum.,2006, *Perlindungan Hukum Terhadap Anak dalam Sistem*

Peradilan Pidana Anak di Indonesia, Bandung.

Marlina, 2009, *Peradilan Pidana Anak di Indonesia Pengembangan Konsep Diversi dan Restorative Justice*, PT Refika Aditama, Bandung, Kata Pengantar Halaman [XV].

Pasal 1 ayat 2 Kitab Undang-Undang Hukum Acara Pidana

Saifudin Azwar, *Metode Penelitian*, Yogyakarta, Pustaka Pelajar, 2003, hal 126.

Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta, UI Press, hal 86.

Tatang M. Amirin, *Menyusun Rencana Penelitian*, Jakarta, PT Raja Grafindo Persada, 1995, Hal 132